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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of Petition of )  
)  
McLeodUSA Telecommunications )  
Services, Inc. Request for Waiver )  
of the Commission's Rules and Orders )  
Governing Subscribers' Changes )  
in Their Preferred Carrier )

CC Docket No. 94-129

**PETITION FOR WAIVER**

**I. INTRODUCTION**

McLeodUSA Telecommunications Services, Inc. ("McLeod" or "Petitioner"), by its undersigned counsel, respectfully requests that the Commission grant McLeod a limited waiver of the Commission's rules, 47 C.F.R. §§ 64.1100 through 64.1190 (1999), and relevant Commission orders applicable to the submission of changes in a subscriber's preferred carrier (collectively, hereafter, "Rules"). McLeod seeks a waiver of the Commission's Rules to the extent necessary to allow McLeod to be designated the preferred carrier for customers currently presubscribed to certain telecommunications carriers affiliated with McLeod without first obtaining each customer's authorization and verification.<sup>1</sup>

The Commission has consistently granted requests for waiver of its Rules where, in the absence of a waiver, customers might suffer loss of service or be charged substantially higher rates.<sup>2</sup>

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<sup>1</sup> See Part II of this Petition for a list of the affiliated telecommunications carriers whose customer bases will be transferred to McLeod.

<sup>2</sup> See footnote 5, *infra*.

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As set forth below, the circumstances that compel McLeod to seek the instant waiver are substantially similar to those found by the Commission in previous cases to warrant a limited waiver of its Rules. In addition, the steps McLeod plans to take to protect the rights of affected customers (including a two-step customer notification process and a commitment to address customer complaints, as described below) are consistent with conditions imposed by the Commission in previous cases where a waiver has been granted. Accordingly, for the reasons set forth herein, McLeod submits that special circumstances exist to justify a waiver of the Rules and that grant of such waiver will serve the public interest.

In support of this Petition, McLeod states as follows:

## **II. THE PETITIONER**

McLeodUSA Telecommunications Services, Inc. ("McLeod") is a competitive provider of integrated telecommunications services to business and residential customers in the Midwestern and Rocky Mountain states. McLeod is authorized to provide competitive local exchange services in 20 states and intrastate interexchange telecommunications services in 48 states, pursuant to certification, registration or tariff requirements or on a deregulated basis. McLeod is also authorized to provide interstate interexchange and international telecommunications services (the latter pursuant to Section 214 authorization granted by this Commission).

McLeod is a wholly owned subsidiary of McLeodUSA Incorporated, a diversified telecommunications company that provides through its operating subsidiaries a broad range of products and services.<sup>3</sup> The following telecommunications carriers are also wholly owned

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<sup>3</sup> The services of McLeodUSA Incorporated primarily include local and long distance  
(continued...)

subsidiaries of McLeodUSA Incorporated: Access Communications, Inc., BRE Communications, LLC, Consolidated Communications Operator Services Inc., Dakota Telecom, Inc., McLeodUSA Communications of Wisconsin, Inc., One Stop Telecommunications, Inc., Ovation Communications International, Inc., Ovation Communications of Illinois, Inc., Ovation Communications of Minnesota, Inc., and S.J. Investments, Inc. (collectively, hereafter, "McLeod Subsidiaries," and each, individually, a "McLeod Subsidiary"). The McLeod Subsidiaries provide competitive local exchange, intraLATA toll, interLATA interexchange, and/or international telecommunications services to presubscribed customers in over 10 states.

### **III. REQUEST FOR WAIVER OF THE COMMISSION'S RULES**

For corporate reasons related to the cost, complexity and inefficiency of operating separate corporate subsidiaries that provide similar competitive telecommunications services, McLeod has determined to consolidate the operations of McLeod and the McLeod Subsidiaries by transferring the customer base of each McLeod Subsidiary to McLeod. To effectuate the consolidation, the McLeod Subsidiaries will transfer their customer accounts to McLeod. Following the consolidation, McLeod intends to provide these customers the same services they currently receive from the McLeod Subsidiaries, at the same rates, and terms and conditions of service that they currently enjoy.

Given the likelihood that some customers may fail to respond to communications from the McLeod Subsidiaries advising them of the consolidation and requesting their authorization to

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<sup>3</sup>(...continued)

telecommunications services, telecommunications network maintenance services and telephone equipment sales, service and installation, private line and data services, the sale of advertising space in telephone directories, the operation of an independent local exchange carrier, and telemarketing services.

transfer the account to McLeod (which could result from customers simply neglecting to mail their response or failing to understand that their written authorization is necessary), McLeod submits that it may not be able to obtain the required authorization and verification for each and every customer prior to the transfer. If the transfer were to occur without a waiver, McLeod submits that some customers might temporarily lose service or be charged substantially higher rates than those that McLeod will charge following the consolidation. To avoid putting these customers at risk of losing service or of being charged substantially higher rates, McLeod seeks a waiver of the Commission's Rules to allow McLeod to become the preferred carrier for these customers without first obtaining each customer's authorization and verification.

Consistent with customer notification plans previously approved and made a condition of a grant of waiver by the Commission, McLeod will implement a two-step process to notify affected customers of the proposed consolidation and assure that these customers' rights are adequately protected. Specifically, McLeod will send a letter to each subscriber of the McLeod Subsidiaries which will: (1) notify them of the assumption of their service by McLeod; (2) assure them that no charge or rate increase will be imposed as a result of the transition; (3) advise them that they are free to change preferred carriers and that, if they decide to do so within 30 days of the transfer date, McLeod will reimburse them for the carrier change charge, if any, imposed by the local exchange carrier; and (4) inform them that they may contact McLeod via a toll-free number with any questions regarding the transfer of their account to McLeod. McLeod will also amend its applicable FCC tariffs to include the service offerings of the McLeod Subsidiaries and the associated rates, terms and conditions of service. Following the consolidation, McLeod will send another notification letter welcoming these customers to McLeod and reiterating the information provided in the first letter.

Additionally, if the Commission grants this petition for waiver, McLeod agrees to investigate and attempt to resolve any outstanding customer complaints that may have been made against any McLeod Subsidiary prior to the transfer date and to address all customer inquiries and complaints after the transfer date. McLeod submits that its proposed notification process and commitment to address customer complaints will adequately safeguard the rights of customers to be transferred from the McLeod Subsidiaries to McLeod.

#### **IV. SPECIAL CIRCUMSTANCES EXIST THAT WARRANT GRANT OF A WAIVER OF THE COMMISSION'S RULES**

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Waiver of the Commission's Rules is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.<sup>4</sup> Where, in the absence of a waiver, customers might suffer disruption in service or be charged substantially higher rates, the Commission has consistently found that special circumstances exist to warrant a waiver of its Rules, and that grant of such waiver would serve the public interest.<sup>5</sup> The Commission has concluded that,

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<sup>4</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>5</sup> See the following Orders issued in *Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, granting waiver of the Commission's authorization and verification requirements to: (1) International Exchange Communications, Inc. ("IE Com") (rel. May 3, 2000) (transfer of customers pursuant to asset purchase); (2) One Call Communications, Inc. d/b/a Opticom (rel. May 2, 2000) (transfer of customers pursuant to asset purchase); (3) IE Com (rel. Mar. 31, 2000) (transfer of customer bases pursuant to separate asset purchase agreements with multiple carriers); (4) Iowa Telecommunications Services, Inc. (rel. Dec. 21, 1999) (transfer of customers pursuant to acquisition); (5) Conversent Communications, Inc. (rel. Dec. 21, 1999) (transfer of customer base pursuant to asset purchase); (6) IE Com (rel. Sept. 10, 1999) (transfer of customer base pursuant to asset purchase); (7) MCI WorldCom, Inc. (rel. Aug. 6, 1999) (transfer of customer accounts pursuant to purchase agreement); and (8) Sprint Communications Company, L.P. (rel. June 17, 1999) (transfer of customer base after dissolution of joint venture with another carrier); (8) CoreComm (rel. May 13, 1999) (transfer of customer base pursuant to bankruptcy plan).

under these circumstances, a limited waiver of its Rules is necessary to provide a seamless transition with no disruption of service.

The special circumstances found by the Commission to justify a waiver of its Rules are present in the proposed consolidation of McLeod and the McLeod Subsidiaries. As stated above, given the likelihood that some customers may fail to respond to communications from McLeod Subsidiaries advising them of the consolidation and requesting their authorization to transfer the account to McLeod, McLeod may not be able to obtain the required authorization and verification for each customer prior to the transfer. If the transfer were to occur without a waiver, some customers might temporarily lose service or be charged substantially higher rates than those that McLeod will charge following the consolidation. Grant of the requested waiver is necessary to avoid putting these customers at risk of losing service or of being charged substantially higher rates.

As described above, McLeod will implement a two-step notification process to assure that affected customers are adequately notified of the change in their preferred carrier. McLeod, moreover, agrees to investigate and attempt to resolve any outstanding customer complaints that may have been made against any McLeod Subsidiary prior to the transfer date and to address all customer inquiries and complaints after the transfer date. McLeod submits that these safeguards will adequately protect the rights of customers to be transferred from the McLeod Subsidiaries to McLeod.

Commission waiver of its Rules will permit McLeod to effectuate a seamless transfer of customers from the McLeod Subsidiaries to McLeod without risk of loss of service to customers or the imposition of substantially higher rates and charges. Grant of the requested waiver, therefore, will serve the public interest.


V. **CONCLUSION**

WHEREFORE, McLeodUSA Telecommunications Services, Inc. respectfully requests that the Commission grant a limited waiver of the authorization and verification requirements of the Commission's Rules, 47 C.F.R. §§ 64.1100 through 64.1190, and relevant Orders to the extent necessary to permit McLeod to become the preferred carrier of customers presubscribed to the McLeod Subsidiaries without first obtaining each customer's authorization and verification. For the reasons stated herein, grant of this Petition will serve the public interest.

Respectfully submitted,

MCLEODUSA TELECOMMUNICATIONS  
SERVICES, INC.

By:

  
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Its Counsel

Date: July 21, 2000

# VERIFICATION

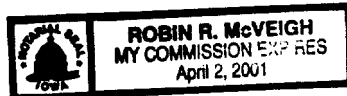
STATE OF IOWA :  
: SS.  
COUNTY OF LINN :

I, David R. Conn, being first duly sworn, state that I am Associate General Counsel and Vice President — Product & Policy of McLeodUSA Incorporated, the parent of McLeodUSA Telecommunications Services, Inc. ("MTS"), the Petitioner in the foregoing Petition; that I am authorized to make this Verification on behalf of Petitioner; that I have read the foregoing Petition and know the contents thereof; and that the same are true and correct to the best of my knowledge, information, and belief.

David R. Conn

Sworn and subscribed before me this 19 day of July, 2000.

Robin R. McVeigh  
Notary Public



My commission expires \_\_\_\_\_.